

**DECISION**

Woorhouse  
29675

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

**FILE:** B-216323.2      **DATE:** October 24, 1984

**MATTER OF:** Management Data Communications  
Corporation--Reconsideration

**DIGEST:**

Prior decision dismissing a subcontractor's protest is affirmed, since the request for reconsideration fails to establish that the federal government had a significant direct involvement with the procurement so as to invoke GAO's bid protest authority under the circumstances enunciated in Optimum Systems.

Management Data Communications Corporation (MDC) requests reconsideration of our decision, Management Data Communications Corporation, B-216323, Sept. 17, 1984, 84-2 CPD ¶ \_\_\_\_\_, in which we dismissed the firm's protest against the award of a subcontract for data processing services to Pennsylvania Blue Shield under a request for proposals issued by Blue Cross/Blue Shield of Utah. Blue Cross/Blue Shield of Utah is the prime contractor under a contract with the Health Care Financing Administration (HCFA) (a component of the Department of Health and Human Services) to administer Medicare Part "B" claims in that state. See 42 U.S.C. § 1395u (1982).

MDC had protested that the subcontract award to Pennsylvania Blue Shield was improper because, as a prime contractor itself to administer such Medicare claims, Pennsylvania Blue Shield's proposed data processing system had been developed at government expense, thereby giving it an undue competitive advantage over private sector offerors such as MDC. We dismissed the protest under the well-settled principle that this Office will not consider protests against the award of a subcontract by a prime contractor of the federal government unless the limited circumstances enunciated in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD ¶ 166, are present. As these specific exceptions were seemingly absent in this

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case and because certain aspects of MDC's protest raised issues of contract administration, we regarded the matter as not for our consideration. Furthermore, we also held that the protest was untimely filed under our Bid Protest Procedures at 4 C.F.R. § 21.2(b)(2)(1984) because it was not received by this office within 10 working days of MDC's knowledge of the subcontract award to Pennsylvania Blue Shield.

In its present submission, MDC urges that the essential bases for protest--that the evaluation of proposals was improperly conducted and biased in Pennsylvania Blue Shield's favor--were not readily apparent until MDC attended a debriefing conference on September 18, 1984, and, therefore, that this submission (received by us on September 24) is timely filed and should be considered. The firm asserts that HCFA has had sufficient direct involvement with the procurement and with the selection of the subcontractor so as to bring the matter within our bid protest authority. It is apparent that MDC has filed the submission before receiving notice of our September 17 decision, but we will treat the matter as a request for reconsideration under our Procedures at 4 C.F.R. § 21.9.

Irrespective of the timeliness issue, we do not believe that MDC offers any new evidence to convince us that the subcontract award in question should be reviewed by this Office. Although MDC alleges that HCFA was directly involved in the procurement by approving the terms and contents of the solicitation issued by Blue Cross/Blue Shield of Utah, including the criteria for evaluation of proposals, as well as by approving the award itself, we fail to find any of the limited circumstances expressed in Optimum Systems, supra, that would persuade us to consider the protest.

In that decision, we stated that we would limit our review to those protests where:

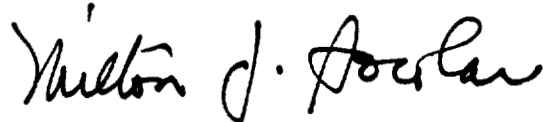
1. the government limited subcontractor sources and exercised such direct control over every aspect of the procurement so that the prime contractor was a "mere conduit";

2. the government required that the prime contractor procure certain ancillary equipment from a particular company;
3. the government "directly participated in the decision" to reject a subcontract proposal and exclude it from competition on resolicitation based on the government's negative preaward survey performed at the prime contractor's request;
4. the agency severely limited the prime contractor's rights of subcontractor selection and was instrumental in drafting the terms of the subcontract;
5. the government hindered the testing and qualification of a potential subcontractor's product to such an extent that the subcontractor could not receive various awards;
6. the government specifically recommended a subcontract award to a particular firm;
7. the prime contractor rejected a potential subcontractor since the government required in the sole-source prime contract that only the product manufactured by another company could be used; and
8. the prime contractor's award of the subcontract was made "for" an agency of the federal government (such as awards made by prime management contractors who operate and manage Energy Resources Development Administration facilities).

We stated that we would also consider questions concerning the awards of subcontracts submitted by those officials of federal agencies who are entitled to advance decisions by this Office.

However, we emphasized that our review authority would not be extended to situations where the only government involvement in the subcontractor selection process was the approval of the subcontract award or proposed award unless the protester demonstrated fraud or bad faith on the part of the government officials involved. Id. at 774. There has been no such showing here. Furthermore, HCFA indicates that although it reviewed and approved the solicitation's proposal evaluation plan, and reviewed the evaluation and selection of Pennsylvania Blue Shield as the successful offeror for compliance with HCFA's procurement guidelines, it did not participate in the evaluation process itself. Therefore, we conclude that HCFA, as a component of the federal government, clearly did not have the significant direct involvement with this procurement that would invoke our review authority under the Optimum Systems standard.

Our prior decision is affirmed.

A handwritten signature in black ink, reading "Milton J. Fowler". The signature is written in a cursive, flowing style.

Acting Comptroller General  
of the United States